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IN THE

Supreme Court of the United States

OCTOBER TERM 1945
No. 254, 255.

S. R. A. INC.

Petitioner,

vs.

STATE OF MINNESOTA (1940, 1941 Tax)

RESPONDENT'S BRIEF

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STATE OF MINNESOTA (1940, 1941 Tax)

RESPONDENT'S BRIEF

OPINIONS BELOW

The findings of fact and conclusions of law (R. 47) and the judgment of the district court (R. 51) are not officially reported. The opinions of the Supreme Court of Minnesota (R. 28-38; 54-74) are reported in 213 Minn. 487, 7 N. W. 2d 484; 219 Minn. 493, 18 N. W. 2d 442; and 219 Minn. 517, 18 N. W. 2d 455.

QUESTION PRESENTED

May the State of Minnesota tax lands held by petitioner under contract for deed from the United States of America, before payment of the whole purchase price, if the proceed-

ings are subject to the paramount rights of the United States?

STATUTES INVOLVED

Minnesota Statutes 1941, Section 272.01 provide:

> "All real and personal property in this state, * * * is taxable, except such as is by law exempt from taxation".

STATEMENT OF THE CASE

The property in question is located on the northwest corner of Fifth and Wabasha Streets in the principal business district of St. Paul. Prior to May, 1939, the United States owned the land and erected thereon a building used for various governmental purposes. For many years immediately prior to that date it had not been used by or for any governmental agency or purpose and was offered for sale as *surplus property.* (R. 47-48)

On that date the petitioner entered into a contract for deed with the United States for the sum of $121,101.00 payable in installments for a period of ten years; the United States agreeing to give a deed upon completion of the payments. (R. 48)

Petitioner was to have immediate possession of the property, could encumber its title to the same, could lease all or any part thereof; or sell parts thereof and obtain a deed prior to payment of full purchase price; and could sell and assign its contract without the consent of the United States. (R. 48)

Petitioner did take possession; razed and demolished the building thereon and replaced it with a one-story structure consisting of several stores—which have been leased to vari-

ous persons. The remainder of the premises have been leased and used as a parking lot. All rents have been retained by S. R. A. for its own account. (R. 49)

No part thereof has ever thereafter been devoted to the business or activities of the United States of America. (R. 49)

The assessment was non-discriminatory. The property was assessed in the same manner as all other property in the county. The true and full value agreed upon was $225,000. (R. 49)

The trial Court found that the petitioner had the equitable title to the property and that the United States had the legal title thereto as trustee for the petitioner, as security for payment of the purchase price, and ordered judgment to be entered in favor of the State, "subject however to the prior rights, liens and interests of the United States". (R. 50-51 Judgment was entered directing a sale "subject however to the prior rights, liens and interests of the United States". (R. 51-52)

SUMMARY OF THE STATE COURT'S OPINIONS

In its first opinion, the Court declared that by virtue of the executory contract, the equitable title vested in the petitioner, as the vendee, which was a "right of the same magnitude as if an outright grant had issued and a purchase money mortgage had been given to secure the unpaid balance". (R. 37) And that the government retained merely a naked legal title, which it holds in trust for the vendee, as security for payment of the balance of the purchase price.

In the second opinion the court distinguished *United States v. Allegheny County*, 322 U. S. 174, upon the following grounds: (1) Allegheny County attempted to tax

machinery *the legal and equitable title* to which was in the United States; (2) The entire plant was by contract employed as a means to discharge the important national function of waging war; (3) The sale of the land to collect the tax would be disastrous to the War Effort; (4) Mesta, as bailee of the machinery, was under a duty to assert the defense of tax immunity to protect the property of the United States.

It held that *Irwin v. Wright*, 258 U. S. 219, and all other statutory land grant cases are not in point, because the entry man or other persons acting under such a statute does not acquire equitable title until he has completely fulfilled the conditions which entitle him to a patent, but in the case of a vendee, the equitable title vests at once although the naked legal title remains with the vendor as security for the payment of the purchase price.

That Congress, under the Homestead Acts, intended to withhold the equitable title to insure that the public domain would be given only to stable citizens capable of establishing permanent homes; that the Acts constitute a standing offer to unidentified persons of unidentified lands; that until complete compliance with the statute, the homesteader had no devisable estate, no right of alienation and no right to change his residence; the government as donor had no right to specific performance, no remedy for breach of condition; and that the grants to the railroads was for the purpose of developing the public domain.

It declared that partial equitable title is an anomaly in the law. The court criticized such expressions as "*complete*" equitable title, as used in the land grant cases or "*perfect*" equitable title as used in *Lincoln County v. Pacific Spruce Corp.* (9 Cir.) 26 Fed. 2nd, 435.

That *United States v. Milwaukee*, 100 F. 828 and *Lincoln County v. Pacific Spruce Corp.*, supra, and other cases, have erroneously adopted the reasoning of the land grant cases as applicable to contracts of sale.

The land grant cases were distinguished, too, because they involved performance of important governmental functions, settlement of the public domain, with which taxation would seriously interfere, if permitted.

Here, taxation does not impair a Federal function.

It declared that the Minnesota, the federal, as well as the universal rule is that the equitable title vests at once as hereinbefore stated. No basis exists for a different rule where the government is the vendor. In the absence of statutory provisions to the contrary, contracts between the United States and a citizen or private corporation are controlled by the same legal principles that govern contracts between private individuals. And where the government was the vendee, the general equitable rule has been applied.

It affirmed the principles announced in the earlier appeal (R. 27-38), and asserted that the character or status of the owner of the equitable title and not that of the holder of the legal title determines whether the equitable estate is subject to taxation. A tax levy upon the vendee's equitable interest is not directly, or indirectly, a tax upon the vendor's legal estate.

The state has exercised its taxing power in an uniform and nondiscriminatory manner, so as to impose no greater burden upon buyers of government property than upon other buyers.

The government has no right to sell its immunity.

SUMMARY OF THE ARGUMENT

1. The vendee, under an executory contract, is the owner of the land. This equitable doctrine is universally accepted and is the rule in the federal courts. The vendor holds the naked legal title in trust for the vendee as security for payment of the purchase price.

2. The land grant cases cited by petitioner are inapplicable. Congress intended to retain the equitable title until the claimant was entitled to a patent. Cases involving the sale of federal lands on contract, such as *Lincoln County v. Pacific Spruce Corp.*, and *United States v. Milwaukee* are unsound because they are based on the reasoning of the land grant cases.

3. The decision is consistent with the federal law. General equitable principles are applicable to contracts of the United States.

4. The decision is in accord with *City of New Brunswick v. United States*, 276 U. S. 547. In substance and effect the cases are the same.

5. The immunity of the federal government is not a barrier to state taxation unless burdens are directly imposed upon the government. A tax upon the vendee, with the government's rights excluded from the sale, imposes no burden upon the government.

6. The petitioner may not invoke the immunity for its own exclusive benefit and gain at the expense of the State and without corresponding benefit to the United States.

7. The Statutes of Minnesota authorize this tax.

ARGUMENT

I.

The Vendee, under an Executory Contract, is the owner of the land.

In speaking of the petitioner's interest in the land, the Court below held that the petitioner has "by virtue of its contract, the equitable title thereto, a right of the same magnitude as if an outright grant had been issued and a purchase money mortgage had been given to secure the unpaid balance". (R. 37)

The petitioner labors under the mistaken notion that it and the United States have separate interests in the land in question. This is not so. Petitioner as "The Vendee is looked upon and treated as the owner of the land". *Pomeroy's Eq. Jur. 5th Ed.* Sec. 368, Vol. 2, p. 21. The interest of the vendee passes to his heirs as real estate. *Summers v. Midland* (Minn.) 209 N. W. 323; *Stearns v. Kennedy* (Minn.) 103 N. W. 212; *Bissell v. Heyward*, 96 U. S. 580, 586. "The equitable interest of the vendor is correlative with that of the vendee; his beneficial interest in the land is gone and only the naked legal title remains, which he holds in trust for the vendee, accompanied, however, by a lien upon the land as security * * *". Pomeroy's Eq. Jur. 5th Ed. Sec. 368, Vol. 2, P. 24. This is the federal rule and was expressed in *Bissell v. Heyward*, supra, as follows:

> "The execution of the contract (with the partial payment thereon) was a transfer in equity of the title of the land to Bissell; leaving in the representatives of William C. Heyward simply a naked legal title as trustee for Bis-

sell, to be conveyed upon performance on his part." (96 U. S. 586)

"This lien * * * is not an interest in land, is neither a jur ad rem nor a jus in re, but merely an encumbrance." *Pomeroy's Eq. Jur. 5th Ed.*, Sec. 368, Vol. 2, p. 24. The vendor's lien is personal property and goes to his personal representative. *Stewart v. Griffith*, 217 U. S. 323, 332; *United States v. Cooper*, 196 F. 584, 585; *In re Boshart's Estate*, 177 N. Y. S. 567. It is subject to an inheritance tax as an intangible. *State v. Probate Court*, 145 Minn. 155, 176 N. W. 493; *In re Boshart's Estate*, supra. The rule that the land passes to the vendee under an executory contract may be said to be the universal rule *Lenman v. Jones*, 222 U. S. 51; *Gunton v. Carroll*, 101 U. S. 426, 430; *Bissell v. Haywerth*, 96 U. S. 580, 586; *Lewis v. Hawkins*, 23 Wall. 119; *National Bank of Ky. v. Louisville Trust* (Ky.), 67 F. (2nd) 97, 100; (certiorari denied 291 U. S. 665), *In re Ben Boldt, Jr. v. Floral Co.* (Colo.) 37 F (2nd) 499; *Laughlin v. North Wisc. Lumber Co.* (Wis.) 176 F 772; *Judd v. Rieff* (Ark.) 295 S. W. 370; *In re Ried's Est.* (Calif.) 79 P. (2nd) 451; *Miami Bond & Mtg. Co. v. Bell* (Fla.) 133 S. 547; *Rienzo v. Cohen* (Conn.) 152 A. 394; *Carter v. Johnson* (Ga.) 119 S. E. 22; *Hatch v. Commerce Ins. Co.* (Ia.) 249 N. W. 164; *Skinner v. Houghton* (Md.) 48 A. 85, 87; *Summers v. Midland* (Minn.) 209 N. W. 323; *Griffin Co. v. Jernigan* (Miss.) 154 So. 342; *Beckman v. Beckman* (Mo.) 58 S. W. 2nd 490; *Peoples Water Co. v. Millville* (N. J.) 123 A. 747; *In Re Boshart's Estate* (N. Y.) 177 N. Y. S. 567, affirmed 177 N. Y. S. 574; *Semmler v. Beulah Coal* (N. D.) 188 N. W. 310; *State v. Stevenson* (Ohio) 177 N. E. 247; *Winslow v. Gilstrap* (Ore.) 32 P. 2d 767; *Anania v. Serenta* (Pa.) 119 A. 554; *Salvatore v. Fus-*

cellaro (R. I.) 166 A. 26; *Baker v. Rushford* (Vt.) 101 A. 769; *Sole v. Swann* (Va.) 120 S. E. 870 *Biddle Concrete Co. v. McOlvin* (W. Va.) 111 S. E. 843; *Security State Bk. v. Monona Golf Club* (Wisc.) 252 N. W. 287.

The vendee is the one entitled to the award if the property be taken by eminent domain—although he holds the proceeds in trust and subject to the vendor's lien. *Clarke v. Long Island Realty Co.*, 126 N. Y. S. 697; *Nixon v. Marr*, 190 F. 913; *Summers v. Midland* (Minn.) 209 N. W. 323.

And where the Vendee was one who is exempt or immune from taxation, including the United States, the property has been held exempt—*Calvin v. Custer County* (Mont.) 107 P. (2nd) 134; *Village of Hibbing v. Commissioner of Taxation* (Minn.) 14 N. W. (2nd) 923, 926.

It therefore follows, as the Court below correctly held, that the lands which are being taxed are the lands of the petitioner; that the tax falls upon it; and that none of the interests of the United States are affected.

That the petitioner holds these lands as the vendee under a contract for deed has been conceded throughout the proceedings. But petitioner now attempts to make of it something else. The contract, is the usual form of contract for deed; the government agreeing to convey the land by deed upon completion of the payment of the purchase price; the purchaser agreeing to make the payments as provided in the contract. The distinction that petitioner attempts to make here is that an officer of the United States has executed the contract pursuant to an Act of Congress. To insist that this makes a difference is to contend that general equitable principles do not apply to commercial transactions of the United States, unless Congress expressly authorizes it. It cannot be denied that general equitable principles apply to contracts

made by the United States as in the case of those made between private citizens.

II.

The Land Grant cases and others cited are distinguishable.

There is little or no similarity between the rights of those claiming under the government by virtue of a statutory land grant, whether it be a railroad grant or under the Homestead Acts, and the relationship of vendor and purchaser, whether the vendor is the United States or a private individual. In the case of the railroad land grant, *the lands were not identifiable* until after the required portion of the road was constructed and accepted and the lands located, selected and surveyed. In the meantime, some of the lands might have been sold; they might have been swamp or federal lands; or they might have been subject to homestead or preemption. In which case, other lands would have to be selected. *M. K. & T. Ry. Co. v. Kansas Pacific Ry. Co.*, 97 U. S. 491. The government exercised much control over the land to be granted, whether railroad or homestead lands. *There was no binding obligation upon the railroad or the homesteaders.* Either could withdraw at any time without further obligation; whereas, if petitioner defaults he not only forfeits the amounts paid but may be held liable for any deficiency. (R. 4, 5) The land grants do not concern themselves primarily with disposition of public lands; but with grants as a means to obtain greater ends, to-wit: the establishment of transcontinental railroads; the development and population of the large public domain, to make it productive and to populate it with responsible, stable people; to reclaim waste

lands, etc. *M. K. & T. Ry. Co. v. Kansas Pacific Ry. Co.*, supra; *Ken Realty Co. v. Johnson*, 138 F. (2nd) 809) to require the clearing of lands for production; the construction of irrigation ditches and making water available to such waste lands, etc. *Irwin v. Wright*, 258 U. S. 219. The grants were intended to *take effect in the future,* when the claimants could show *complete* compliance with the statute, *Hall v. Russell*, 101 U. S. 503; whereas the grant to petitioners was intended to and did take effect *immediately*, to to the same extent, as if an outright grant had been made and a mortgage taken for the payment of the balance of the purchase price. Under the statutory land grant, Congress intended that *the legal and equitable title* should be retained until all of the conditions of the statute had been completely performed. *Ruddy v. Rossi*, 248 U. S. 105. Of this subject, the Court, in *Ken Realty Co. v. Johnson*, 138 F. 2d 809, 811 had this to say:

> "The development and settlement of the public domain involves policies and governmental activities and interests different from those here present. The settler may well be extended protection until he is firmly established as such, and the government has a continuing interest to see that he is. But in this case the land has been found useless to the government, and the government is seeking to divest itself of it and to return it to the general mass of property in the state. It has given the purchaser full possession and control of the property and is relieved of the risk of its loss or destruction and has allowed the right to lease, and even to sell off parts of it, *retaining the title solely to secure the balance of the purchase price.*"

A more complete discussion of this question appears in the opinion of the Court below. (R. 54) This should demon-

strate the inapplicability of *Irwin v. Wright*, supra, *Kansas Pacific Ry. Co. v. Prescott*, 16 Wall. 603; *Union Pacific Ry. Co. v. McShane*, 22 Wall. 444 and other similar cases cited by petitioner.

In contrast to the purposes of the land grant acts, *U. S. C. title 40*, Sec. 304 (A), which authorizes the sale of "*surplus property*", (property which has out-lived its usefulness for governmental functions) serves the purpose on the one hand "of salvaging its value and on the other hand for the purpose of returning it to the state tax rolls to bear its just share of the costs of local government." (R. 65)

The petitioner relies upon *Lincoln County v. Pacific Spruce Corp.* 26 F. (2d) 435 and its predecessor, *United States v. Milwaukee*, 100 F. 828. Although they are cases involving the sale of lands by the government on contract, we contend that they were erroneously decided because they followed and adopted the rule of the land grant cases. In the *Pacific Spruce Corp.* case, supra, the court distinguished the equitable doctrine that should have been applied, solely because the United States was the vendor. It said:

> " * * * and the final test is: Has the government parted with everything except the naked legal title? If so, the property is subject to taxation; otherwise not." (26 F. 2d 435, 437).

As between private individuals, the Court undoubtedly would have answered that question in the affirmative because it is the general equitable rule that the vendee is the owner of the land; but because and only because the United States was the vendor, the Court declared, upon the authority of the land grant cases, that the equitable title does not pass to the vendee until the entire purchase price has been

paid and the vendee is entitled to a deed. This is a novel doctrine and without *sound* authority to support it. *In Ken Realty Company v. Johnson,* supra, the court, after distinguishing the land grant cases and demonstrating their inapplicability, said:

> "We consciously refuse to follow *Lincoln County v. Pacific Spruce Corporation.*" (138 F. (2nd) 809, 812).

It will hereinafter be seen that the contracts of the United States have the same legal and equitable effect and consequences as contracts between private persons. The court in the *Pacific Spruce case,* supra, should have applied the universal equitable doctrine and held that the government did part with everything but the naked legal title.

The petitioner cites *United States v. County of Allegheny,* 322 U. S. 174 in support of its contentions. A review of the facts will at once demonstrate that it is inapplicable. There, the State of Pennsylvania attempted to lay a tax upon machinery, *the legal and equitable title* to which were in the United States. Two thoughts dominate the decision of the Court: first, the attempt of Allegheny County authorities to deny or defeat the government's title to the machinery; and second, that the machinery was being used by the Mesta Machine Company in the performance of a vital governmental function—the production of heavy field guns for the Army. Three propositions were decided by the court: (1) Where the government by pursuing its procurement policies, has purchased property, the State law may not be resorted to, to deny the government's title; or to defeat a government procurement policy; (2) That the substance of the procedure was to lay an ad valorem general property tax on property owned by the United States; (3) That the rights of the gov-

ernment are affected because "If the tax is collected by selling the land out from under the machinery, the effect on its usefulness to the government would be almost as disastrous as to sell the machinery itself. The coercion of payments from compelling the government to move its property and interrupt production at the Mesta plant would defeat the purpose of the government in owning and leasing it." (322 U. S. 187)

In the case at bar, the equitable title has passed to the petitioner and it is using the property with all the incidents of ownership for its own exclusive benefit and gain. It renders no governmental function whatsoever. The property was disposed of by the government as "surplus property". The tax in the instant case does not burden the government or interfere with any governmental function. The paramount rights of the United States are preserved. We have not resorted to a trick local law to defeat the government's title. Our Court has applied general equitable principles.

III.

The decision is consistent with the Federal law.

The petitioner contends that the federal law requires a holding that the *legal and equitable* were retained by the Government under its contract and has urged that the land grant cases and the contract cases based thereon, such as *Lincoln County v. Pacific Spruce Corp.* supra, are controlling. We have already demonstrated the inapplicability of these cases.

What is the federal law? In the absence of statute, this court draws upon general principles consistent with equity.

Jackson County v. United States, 308 U. S. 343. In commercial transactions, it follows the general commercial law. The rule applied is determined by reference to the federal and state cases and is such as governs in transactions between private parties. *National Metropolitan Bank v. United States* ....U. S. ....., 89 L. ed. 386, (Advance Opinions); *D'Oench D. and Co. v. Federal Deposit Inv. Corp.*, 315 U. S. 447; *Deitrick v. Greaney*, 309 U. S. 190. "The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf. All obligations which would be implied against citizens under the same circumstances will be implied against them". *United States v. Bostwick*, 94 U. S. 53; *Cory Bros. & Co. v. United States*, 51 F. 2d 1010. In *Calvin v. Custer County* (Mont.) 107 P. 2d 134, where the United States was the vendee, the court declared that the equitable title vested in it and that the property was thereafter immune from taxation. It said, "We think that in determining in whom the equitable interest vested, we must treat the United States as if it were a private person or corporation, amenable to suit".

In both jurisdictions, state and federal, the general and almost universal rule as shown by the numerous decisions herein cited, is as expressed in *Bissell v. Heyward*, 96 U. S. 580, 586;

> " * * * the execution of the contract (with partial payment thereon) was a transfer in equity of the title to the land to Bissell; leaving in the representatives of William E. Heyward simply a naked title as trustee for Bissell, to be conveyed upon performance on his part."

Pomeroy Eq. Jur. 5th ed. Vol. 2, Sec. 368; *Stewart v. Griffith,* 217 U. S. 323, 332; *Gunton v. Carroll,* 101 U. S. 426, 430; *Lenman v. Jones,* 222 U. S. 51, 54; *Lewis v. Hawkins,* 23 Wall. 119; *National Bank of Ky. v. Louisville Trust,* 67 F. (2d) 97, 100 (Certiorari denied) 291 U. S. 665; *Stearns v. Kennedy,* 94 Minn. 439, 103 N. W. 212; *State v Probate Court,* 145 Minn. 155, 176 N. W. 493; *Wilder v. Haughey,* 21 Minn. 101. It therefore follows that whether local law or federal law applies, there is no conflict between the rule as applied by the court below and the federal law.

IV.

The decision is in accord with the holding of this Court.

We consider the *City of New Brunswick v. United States,* 276 U. S. 547 to be controlling. That case involved facts which in substance and effect were the same as those which are involved in this appeal. There the United States Housing Administration of World War I, a federal agency, under authority of Congress, sold a number of homes on contract agreeing upon payment of 10% of the purchase price to give a deed and to take back a first mortgage as security for payment of the balance of the purchase price. When this was done and before the deeds were delivered, the City of New Brunswick placed these properties upon the tax rolls. They taxed them upon their *entire value.* The United States intervened and sought to have the enforcement of the taxes enjoined. Counsel for the government cited the railway land grant cases and Homestead cases, among others. This Court ignored these authorities, however, and held that the purchasers were the equitable owners, and may be

taxed to the extent of the *full value of the property* but that the city's lien was inferior to the government's mortgage and that the city could sell the property to satisfy the tax lien only if the rights of the United States Housing Corporation were expressly excluded. The court said:

> "We see no reason, however, if the New Jersey law permits, why the city may not assess taxes against the purchasers upon the entire value of the lots and enforce collection thereof by sale of their interest in the property. With that the corporation and the United States have no concern." (276 U. S. 547, 555, 556)

And the Court pointed out that tax sales could be held if they are made, "by express terms, subject to all such prior rights, liens and interests. This, we think will meet the equities of the case as between the corporation and the city and fully protect the paramount rights of the United States." In the case at bar, the trial court followed the suggestion of this court by incorporating in the Order for Judgment in favor of the respondent the precise language of the *New Brunswick case,* "subject, however, to the prior rights, liens and interests of the United States", and in the Judgment directing the sale "subject, however, to the prior rights, liens and interests of the United States". (R. 50 to 52)

The only distinction between the *New Brunswick case*, supra, and the case at bar is that in that case the government agreed to give a deed and take back the mortgage for 90% of the purchase price, whereas, in the instant case the government resorted to entering into a contract for deed to accomplish the same result. In the one case, it held a first mortgage as security for payment of the purchase price; and in the other, the naked legal title as security for payment of

the purchase price. *If we are to consider the substance of these transactions they are identical.* Cf. *Helvering v. Lazarus & Co.*, 308 U. S. 252, 255 where it was said that, "General recognition has been given the 'established doctrine that a court of equity will treat a deed, absolute in form, as a mortgage, when it is executed as security for a loan of money'. In the field of taxation, administrators of the laws and the courts are concerned with substance and realities . . . "

The *City of New Brunswick case*, supra, was followed by *Ken Realty Company v. Johnson*, 138 F. 2d 809, (5th C. C. A.) which case involved the sale of federal property under a contract for deed on terms almost identical with those involved in the instant case, and the property was held taxable before the whole purchase price was paid according to its full value, less such amounts as may still be due the United States.

V.

The Federal immunity is not a barrier to State taxation unless burdens are directly imposed on the Federal Government.

This court recently considered the conflicting interests of state and nation and put its position thus:

> "The trend of our decisions is not to extend governmental immunity from state taxation and regulation beyond the national government itself and governmental functions performed by its officers and agents. We have recognized that * * * state regulation like state taxation inevitably imposes some burden on the national government of the same kind as those imposed on citizens of the United States within the state's borders * * * ." *Penn Dairies vs. Milk Control Commission*, 318 U. S. 261, 270, 271.

The Federal immunity should not be allowed unless from practical considerations it appears that there is a direct burden upon or interference with a governmental function. In *Helvering v. Mountain Producers Corporation,* 303 U. S. 376, 385 this court said:

> "In numerous decisions we have had occasion to declare the competing principle, buttressed by the most cogent consideration, that the power to tax should not be crippled 'by extending the constitutional exemption to those subjects which fall within the general application of non-discriminatory laws, and where no direct burden is laid upon the governmental instrumentality and there is only remote, if any, influence upon the exercise of the function of government.'"

From a practical view, there is no direct interference with a federal function in the case at bar. The effect upon the sale of property would only be remote. The purpose of the immunities is to "forestall undue interference", (*Graves v. New York,* 306 U. S. 466, 477) so that neither government shall be "allowed to cripple the operation of the other". (306 U. S. 488).

We have assessed and taxed this property as all other property is assessed and taxed. The value upon which the tax is based is the agreed value. Therefore, the tax is non-discriminatory.

It is claimed that such taxation interferes with the power of Congress to dispose of Federal lands. It does not interfere with it, even if it be claimed that the United States could realize more from such sales if immunity were assured to the purchaser. It did not prove to be true in this case. The consideration was $121,101; while the petitioner agreed that the value was $225,000, which includes a small one-story

structure. But is the immunity of the United States from taxation subject to barter and sale? If not, then in what manner has the State interfered with this Federal power? The immunity is personal to the government, and is not transferable to or to be used for the special protection of the citizen. Any effect upon sales of property would be remote. All that the federal government has a right to require is that it "be assured a fair and non-discriminatory sale market in competing with other vendors". (R. 70) The only purpose of the immunity is not one of profit but one that will enable a dual form of government to function. The paramount rights of the United States have been recognized and preserved in the judgment of the Court. (R. 51, 52)

VI.

The Petitioner may not assert the Federal immunity from taxation.

We question the right of the petitioner to assert the federal immunity from taxation for its own exclusive gain, without benefit of any kind resulting to the United States. In recent years, this court has rejected such claims. It was expressed in this manner by Mr. Chief Justice Stone:

> "* * * and where that immunity is invoked by the private citizen it tends to operate for his benefit at the expense of the taxing government and without corresponding benefits to the government in whose name the immunity is claimed." *Graves v. New York*, 306 U. S. 466, 483.

To the same effect see the dissenting opinion of Mr. Justice Holmes in *Panhandle Oil Company v. Knox*, 277 U. S. 218,

224; *Helvering v. Mountain Producers Corporation*, 303 U. S. 376, 387; *Standard Oil Company v. Fontenot*, 4 So. (2nd) 634. The petitioner is seeking a "*windfall*". *Ex parte Kumezo Kawato*, 317 U. S. 69. The *Allegheny County case, supra*, is not to the contrary. There the private citizen gained nothing by asserting immunity. He was a cost-plus contractor and could admittedly have passed the tax on to the United States. The claim of immunity was made for the exclusive benefit of the United States. And the United States intervened at the very outset of the proceedings and maintained its claim of immunity to the very end.

No "windfall" can result to the State. The levy of this tax merely permits it to equalize the tax burden which makes it possible for owners of competing property to compete on an equal basis with the petitioner. To require tax-paying property to carry the entire tax burden while competing with tax-free property used for private commercial gain is obviously unjust.

VII.

The Statutes of Minnesota authorize this tax.

The authority for the taxation of the property in question is to be found in Minnesota Statutes 1941, Section 272.01, which provides:

> "All real and personal property in this state * * * is taxable, except such as is by law exempt from taxation."

This Act represents the general authority for tax officials to lay all property taxes, including this property, unless it be considered immune from taxation. What is "by law exempt from taxation" is listed in Minnesota Statutes 1941, Sec. 272.02 as follows: "(1) All public burying grounds. (2) All public school houses. (3) All public hospitals. (4) All academies, colleges and universities, and all seminaries of learning. (5) All churches, church property and houses of worship. (6) Institutions of purely public charity. (7) All public property exclusively used for any public purpose. (8) Personal property of every household of the value of $100 . . . "

This specification of exempt property together with the broad sweep of Sec. 272.01, negatives the claim that the property in question is outside the reach of the statute; or that the enactment of other legislation is necessary to subject it to taxation. So the authority to tax is determined by the question of immunity.

By decision, as well as by statute, (Minnesota Statutes 1941, Section 287.02), an executory contract for the sale of land under which the vendee takes possession is considered

to pass the land to the vendee and to create a mortgage of the land for the benefit of the vendor.

The petitioner persists in contending that the State's lien is superior to that of the United States. It is sufficient o answer hat the judgment here for review, expressly preserves the superiority of the government's lien; and it has the unanimous approval of the Minnesota Supreme Court. In *Baltimore Shipbuilding & Dry Dock Co. v. Baltimore,* 195 U. S. 375, the United States had conveyed certain lands to the company reserving the right to certain use of the property and rights therein and upon failure of the condition the property should revert to the United States. The property was taxed subject to the condition. In regard to the effect of the State's tax lien, Mr. Justice Holmes, speaking for the Court, said:

> "Perhaps it was assumed that this always was the effect of tax sales (creation of paramount lien, citing *N. P. R. Co. v. Traill County*). But it needs no argument to show that a State may do less . . . . With regard to what the State of Maryland has done and what are the purport and attempted effect of the tax in this case, we follow the court of appeals (of Maryland). That court treated the tax and the lien as going only to the dock company's interest in the land . . . ."

State v. County of Washington (Minn.) 292 N. W. 204, does not hold that a tax lien survives cancellation of the contract for deed where the State was the vendor, *in the absence of statutory authority.* In that case the lien survived only because of the statute regulating a particular agency. *Foster v. Duluth*, 120 Minn. 484, 140 N. W. 129 settles this question.

The other statutes were all argued to the Court below. They do not make that taxable which was not taxable under

Section 272.01. But are merely declaratory of what the law would be in the absence of such statutes. Ample authority for the levy of the tax in question is to be found in Section 272.01. It having been shown that the petitioner is the owner of the land, the right and the necessity to levy the tax under that statute is apparent.

No federal question is involved because federal rights have been expressly excluded from the levy and enforcement of the tax. Therefore, the authority to tax the petitioner's equitable title, the assessment of the tax and its enforcement under the Constitution and laws of the State of Minnesota are questions of local law and were determined against the petitioner. *Taylor v. Secor*, 92 U. S. 575, 618; *Lewis v. Monson*, 151 U. S. 545, 549; *General Am. Tank Car Corp. v. Day*, 270 U. S. 367, 371; *Storaasli v. Minnesota*, 283 U. S. 57, 62; *Schuylkill Trust Co. v. Pennsylvania*, 302 U. S. 506, 512, 514; *Illinois Central R. Co. v. Minn.*, 309 U. S. 157, 165; *Central Hanover Bank & Trust Company v. Kelly*, 319 U. S. 94, 97. The right to tax the property according to its full value, as other property is taxed was settled by *City of New Brunswick v. United States*, supra.

CONCLUSION

In conclusion we feel that it may be fairly said that *United States v. Milwaukee*, supra, and *Lincoln County v. Pacific Spruce Corp.*, supra, are erroneous because they are based upon inapplicable and distinguishable authority; that an equitable conversion resulted from the contract for deed in this case and as a result thereof the tax laid was not upon the land of the United States; that the facts are in substance and effect similar to those in and therefore controlled by the holding of *City of New Brunswick v. United States*, supra; that the tax here levied does not constitute a burden upon the United States Government or any of its instrumentalities; and finally, that the petitioner should not be heard to assert the federal immunity for its own benefit, but should be required to meet its fair share of the costs of State and local government whose protection it enjoys.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

Nos. 254 and 255.—October Term, 1945.

254	S. R. A., Inc., Petitioner, *vs.* State of Minnesota.	On Writs of Certiorari to the Supreme Court of the State of Minnesota.
255	S. R. A., Inc., Petitioner, *vs.* State of Minnesota.	

[March 25, 1946.]

Mr. Justice Reed delivered the opinon of the Court.

A question as to the power of the State of Minnesota to tax realty within the boundaries of that state, when the legal title remains in the United States is presented by this writ of certiorari.[1] The state ceded jurisdiction over the realty in accordance with the exclusive legislation clause of the United States Constitution, Article I, Section 8, Clause 17.

The realty in question was conveyed to the United States in 1867 as a site for a building to house a post office, a custom's office and offices for various departments and agencies of the United States. The building was eventually vacated and the property sold in 1939 by the Director of Procurement of the Department of the Treasury under the authority of an act for the disposal of surplus federal real estate. 49 Stat. 885.

It was purchased on public sale and improved by petitioner who was in full possession with right of user under an executory contract of sale between it and the United States at the time of the levy of the tax. That contract provided for a cash payment and annual instalments, possession by petitioner so long as it met the terms of the contract, and for repossession by the United States, with retention of prior instalments of the purchase price, upon the purchaser's failure to comply with any term or condition of the

[1] No. 255, S. R. A., Inc. *v.* State of Minnesota, is in all respects like No. 254, except that the state tax was laid for the year 1941. This opinion in No. 254 governs the result and the same judgment of affirmance is directed. See 219 Minn. 517; — U. S. —.

contract. Upon repossession, the United States was authorized to resell the realty and recover any resulting deficiency from the petitioner. All obligations due under the contract had been met. The major portion of the contract price had not fallen due and was unpaid. The contract permitted leases to others in subordination to the rights of the United States. The contract required the United States to execute and deliver a quit claim deed for the realty to the petitioner upon its completion of the requirements of the contract.

With the ownership of the property in the situation just described, taxes for general and special purposes were levied on the property for 1940 under the usual Minnesota procedure. The tax was stated in the assessment to be on the realty "subject to fee title remaining in the United States of America." Petitioner duly filed its objections in the proper state district court, pursuant to statute. 1 Minn. Stat. (1941) Ch. 278. So far as concerns this review, the objection to the tax was based on a claimed exemption of the realty from state taxation because title to all of the premises was in the United States. The exemption was sustained by the trial court. The Supreme Court of Minnesota reversed that judgment and denied exemption. *In re Petition of S. R. A., Inc.*, 213 Minn. 487. On retrial, the lower court held the realty liable for the tax and declared a lien "upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or equity, of every person, company, or corporation, subject however, to the prior rights, liens and interests of the United States of America." This second judgment was affirmed on appeal. *In re Petition of S. R. A., Inc.*, 219 Minn. 493.

Certiorari was sought under Section 237 (b) of the Judicial Code. It was granted because of the importance and uncertainty of the question of the right of a state to tax realty sold by the United States in possession of a buyer from the Government under a contract of sale with uncompleted conditions for execution and delivery of the muniments of title. — U. S. —.[2]

[2] Varying results have been reached by other courts in similar situations. Lincoln County v. Pacific Spruce Corp., 26 F. 2d 445; Ken Realty Co. v. Johnson, 138 F. 2d 809; Mint Realty Co. v. Philadelphia, 218 Pa. 104; Copp v. State, 69 W. Va. 439; ABR Corp. v. Newark, 133 N. J. L. 34. See also Bancroft Investment Corp. v. City of Jacksonville, — Fla. —, decided January 15, 1946.

The supremacy of the Federal Government in our Union forbids the acknowledgment of the power of any state to tax property of the United States against its will. Under an implied Constitutional immunity, its property and operations must be exempt from state control in tax, as in other matters. *M'Culloch* v. *Maryland*, 4 Wheat. 316, 425, *et seq.*; *Van Brocklin* v. *Tennessee*, 117 U. S. 151, 177; *United States* v. *Allegheny County*, 322 U. S. 174, 176-77. This postulate, as a matter of federal law, forces final decision of the validity of claimed exemptions under this immunity upon this Court. *United States* v. *Allegheny County*, *supra*, 183, and cases cited. The impact of state taxation on federal operations may be so close and threatening as to compel judicial intervention to declare the state tax invalid, as in the *M'Culloch* case, or so remote and incidental as to justify a federal court in refusing to relieve a taxpayer from a state tax. *Alabama* v. *King & Boozer*, 314 U. S. 1. The line of taxability is somewhat irregular and has varied through the years.[3]

The right of a state to tax realty directly depends primarily upon its territorial jurisdiction over the area. The realty of petitioner had been conveyed to and used by the United States for the essential governmental activities which authorized the exercise of its exclusive legislative jurisdiction.[4] Exclusive legislative power is in essence complete sovereignty.[5] That is, not only is the federal property immune from taxation because of the supremacy of the Federal Government but state laws, not adopted directly or impliedly by the United States, are ineffective to tax or regulate other property or persons upon that enclave.[6] It would seem that the United States obtained this property in compliance with cession

[3] Compare Mayo v. United States, 319 U. S. 441, with Alabama v. King & Boozer, *supra*, and United States v. Allegheny County, *supra*, p. 176, notes 1 and 2, and cases cited. See Wilson v. Cook, No. 328, 1945 Term, decided March 4, 1946.

[4] Art. I, Sec. 8, Cl. 17:

"The Congress shall have Power . . .

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock Yards, and other needful Buildings; . . ."

[5] Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525, 532-33; United States v. Unzueta, 281 U. S. 138; Surplus Trading Co. v. Cook, 281 U. S. 647, 652-56; Bowen v. Johnston, 306 U. S. 19.

[6] Stewart & Co. v. Sadrakula, 309 U. S. 94; Surplus Trading Co. v. Cook, *supra*, note 5.

by Minnesota of exclusive sovereignty. Act of February 9, 1867, Minn. Laws 1867 Jan., Ch. LXXIX. The acceptance by the United States at that time of the power ceded is presumed.[7] This Court apparently has never directly passed upon the effect on federal sovereignty of the property's transfer by the United States to private hands.

In this instance there were no specific words in the contract with petitioner which were intended to retain sovereignty in the United States. There was no express retrocession by Congress to Minnesota, such as sometimes occurs.[8] There was no requirement in the act of cession for return of sovereignty to the state when the ceded territory was no longer used for federal purposes.[9] In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I, Section 8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the states. As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to nonfederal hands is a relinquishment of the exclusive legislative power.[10] Recognition has been given to this result as a rule of necessity.[11] If such a step

[7] Fort Leavenworth R. R. Co. *v.* Lowe, *supra*, p. 528; Benson *v.* United States, 146 U. S. 325, 330; Mason Co. *v.* Tax Comm'n, 302 U. S. 186, 207.

At the time of the purchase, 5 Stat. 468, later incorporated in R. S. § 355, was in force. As it required consent of the state of the situs before expenditures of public money by the United States on locations purchased for needful buildings, it is to be presumed that all requirements were satisfied. R. S. § 355 has been consistently construed to require full sovereignty in the United States. 8 Op. A. G. 102; 10 Op. A. G. 34; 20 Op. A. G. 611; 31 Op. A. G. 265; 38 Op. A. G. 341; 39 Op. A. G. 285. R. S. § 355 has been superseded. 40 U. S. C. § 255; Adams *v.* United States, 319 U. S. 312.

[8] 30 Stat. 668; 9 Stat. 35.

[9] Compare Palmer *v.* Barrett, 162 U. S. 399; James *v.* Dravo Contracting Co., 302 U. S. 134, 144.

[10] Compare Palmer *v.* Barrett, *supra*, with Arlington Hotel *v.* Fant, 278 U. S. 439.

[11] Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S. 525, 542: "It is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved

is necessary, Minnesota showed its acceptance of a supposed retrocession by its levy of a tax on the property. Under these assumptions the existence of territorial jurisdiction in Minnesota so as to permit state taxation depends upon whether there was a transfer of the property by the contract of sale.

In determining the meaning and effect of contracts to which the United States is a party, the governing rules of law must be finally declared by this Court. *United States* v. *Allegheny County*, *supra*, 183. Turning to the contract, we find in it no characteristics which differentiate it from the normal executory contract for the sale of land with partial payments. Normally, contracts between the United States and others are construed as contracts between private parties. *Lynch* v. *United States*, 292 U. S. 571, 579. This Court has been of the opinion that contracts for the sale of land transfer to the purchaser the equity in the land. We think this contract did so. That equity is realty. It was owned by the vendee. The United States retains only a legal title as security. In substance it is in the position of a mortgagee.[12] Minnesota has the same rule. *In re Petition of S. R. A., Inc.*, 219 Minn. 493, 507; 213 Minn. 487, 495, 499. Therefore when petitioner entered into possession of this real estate under its contract of purchase, the taxed property by the transfer became subject to the territorial jurisdiction of Minnesota.[13]

Territorial jurisdiction in Minnesota does not dispose of this tax problem. The nub of this case, that is the immunity from state taxation of property to which the United States holds legal title, remains. Minnesota took care to leave unassessed whatever interest the United States holds. The levy and judgment was "subject to fee title remaining in the United States of America." 219 Minn. at 496. Although Minnesota real estate taxes are assessed

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from sale. When they cease to be thus used, the jurisdiction reverts to the State."

The reference to federal control of "reserved" land probably relates to the supremacy of the United States for the management of governmental affairs in the absence of exclusive legislative power. See page 539.

[12] Lenman *v.* Jones, 222 U. S. 51; Gunton *v.* Carroll, 101 U. S. 426, 430-31; Bissell *v.* Heyward, 96 U. S. 580; Secombe *v.* Steele, 20 How. 90, 103-104. Compare 8 Thompson, Real Property, Sec. 4579; 2 Sugden, Venders (14th Ed.), 375. See Lowery *v.* Peterson, 75 Ala. 109. Compare Restatement, Conflict of Laws § 209.

[13] We intimate no view as to the legislative status of this property, if it is repossessed by the United States. See the cases cited in note 10, *supra*.

on the parcel of land as a "unitary item" including "all rights and privileges," the state does not claim that a tax sale will divest the fee title of the United States. 213 Minn. at 493, 499. Apparently the state is of the view that the equitable interest alone may be sold under its laws, leaving the fee of the United States in its position of priority over any interests which may be transferred by the tax sale. 219 Minn. at 513. Such a construction of the state law is binding upon this Court. It does not impinge upon federal rights. So long as that situation exists, the determination of the state cannot be challenged here. The possibility of repossession by the United States is not enough to block a tax sale in which the paramount rights of the United States are protected. *Baltimore Shipbuilding Co.* v. *Baltimore*, 195 U. S. 375, 381-82; *New Brunswick* v. *United States*, 276 U. S. 547, 556; *United States* v. *Alabama*, 313 U. S. 274, 282.[14]

Petitioner's argument goes beyond the question of the enforcement of the assessed tax. It is bottomed on the implied constitutional immunity from state taxation of property for which the United States holds title subject to unfulfilled conditions. In *Van Brocklin* v. *Tennessee*, 117 U. S. 151, that state sought to tax realty of the United States which was not held for the purposes or under the authority of the Cession Clause. Certain lots had been purchased by and conveyed to the United States pursuant to a federal tax sale. 12 Stat. 423, § 7. These lots were later transferred by deed or certificate of release to private owners. 17 Stat. 330; 18 Stat. 313. Tennessee assessed its own taxes upon the entire property for the years during which title to the lots was in the United States and attempted to collect them from the private owners after the transfer. Tennessee's claim was founded on the absence of state cession. This Court refused to permit the state's action, saying at page 179:

> "While the United States owned the land struck off to them for the amount of the taxes because no one would pay more for it, and until it was sold by the United States for a greater price, or was redeemed by the former owner, the United States held the entire title as security for the payment of the taxes;

[14] As the case was tried below on the theory of direct or implied immunity because the fee was in the United States, we neither consider nor decide the effect of a tax sale of petitioner's rights on its contract with the United States. See Wilson *v.* Cook, No. 328, 1945 Term, p. 5, slip opinion. Compare 11 U. S. C. § 15 with Freedman's Saving Co. *v.* Shepherd, 127 U. S. 494.

and it could not be known how much, if anything, beyond the amount of the taxes the land was worth. To allow land, lawfully held by the United States as security for the payment of taxes assessed by and due to them, to be assessed and sold for State taxes, would tend to create a conflict between the officers of the two governments, to deprive the United States of a title lawfully acquired under express acts of Congress, and to defeat the exercise of the constitutional power to lay and collect taxes, to pay the debts and provide for the common defence and general welfare of the United States."

The posture of the land sought to be taxed in the *Van Brocklin* case differentiates it from that presently under consideration. The United States there held complete title upon the assessment dates as a purchaser at a tax sale. The entire bundle of rights in the property was assessed by Tennessee. As a matter of grace, the United States had granted a right to the taxpayer to redeem. It was like an option to purchase. The statute might have authorized the sale of the land to any purchaser without consideration for the former owner. The United States, here, as we have demonstrated above had transferred at the time of the assessment equitable ownership to the purchaser and has only a legal title as security for the unpaid purchase price. See *United States* v. *Allegheny County*, 322 U. S. 174, 188.

Petitioner presses various land grant cases upon us as announcing the controlling rule.[15] The principle which petitioner extracts from these cases is that alienation of United States property does not pass an interest to the vendee taxable by a state until all conditions precedent for the delivery of the deed have been complied with. In the present case, petitioner asserts, the full amount of the purchase price must be paid before the state can tax. Such a rule can be extracted by the literal reading of certain phrases in the land grant cases.[16] The reason for the rule was said, in the earlier cases, to be that a state tax sale would defeat the government lien for surveying or other costs because the state sale would

[15] Railway Co. *v.* Prescott, 16 Wall. 603; Railway Co. *v.* McShane, 22 Wall. 444; Northern Pacific R. R. Co. *v.* Traill County, 115 U. S. 606; Irwin *v.* Wright, 258 U. S. 219.

[16] Irwin *v.* Wright, *supra*, 228, 229, 232, 233; Northern Pacific R. R. Co. *v.* Traill County, *supra*, at 609; Railway Co. *v.* McShane, *supra*, at 462.

[17] 16 Wall. at 608; 22 Wall. at 462; 115 U. S. at 610. See also Colorado Co. *v.* Commissioners, 95 U. S. 259. In the *McShane* case, itself, which clearly set out the above reason for non-taxability, it was recognized that the federal right of pre-emption for the benefit of settlers would not be affected by a

pass a title free from lien of the United States.[17] As heretofore shown, page 5 supra, this ground for refusing power to Minnesota to tax is not present in this case, since Minnesota holds that the lien of the United States will remain paramount.

Irwin v. *Wright* involved the taxability by a state of property occupied by an entryman under the Reclamation and Homestead Acts who had not received his required final certificate of land clearance, pages 227, 228, 232. The reason for the rule against state taxation until the equitable title passes from the United States to the entryman was there placed upon the policy of the Government to require those who sought government land to perform the required conditions of residence or improvement before beneficial title, subject to state taxation, passes from the United States to the locator. This transfer was said not to take place until the certificate was issued. Page 232. The prohibition of state taxation until the certificate was issued was one of the means by which the Government furthered its public policy of land settlement. After compliance with the condition and before patent, the state could tax.[18]

We think the public policy of national development and federal tax collection justify the limitation on state taxing power announced by the foregoing decisions. We do not, however, conclude that their rationale leads to an exemption from state taxation of all lands in which the United States holds legal title as security for the purchase price. To say that the payment of the purchase price is a necessary condition precedent to the loss of federal immunity is to make the rule too mechanical. It should be sufficiently flexible to subject real private rights, disentangled from federal policies, to state taxation. This has been the holding in mining claims.[19] Where beneficial interest has passed to a vendee, the retention of legal title does not give a significant difference from the situation of a deed with a lien retained or a mortgage back to secure the purchase money.

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state tax sale. This Court therefore reversed its former judgment in the *Prescott* case that land held by the railroads subject to this pre-emption could not be taxed by a state. 22 Wall. at 461. Congress promptly terminated the land tax exemption after the Traill County decision by subjecting railroad land grants to state taxation before payment of conveyancing costs. 43 U. S. C. § 882.

[18] Bothwell *v.* Bingham County, 237 U. S. 642, 647.

[19] Elder *v.* Wood, 208 U. S. 226.

That was the interpretation given the facts in *New Brunswick* v. *United States*, 276 U. S. 547.[20] The City of New Brunswick under authority of New Jersey sought to tax lots in the possession of purchasers from the Housing Corporation, a corporation wholly owned by the United States and therefore treated as the United States. These purchasers had paid enough of the purchase price—ten per cent—to entitle them to deeds under their contracts but had not paid the entire purchase price. The deeds had not been delivered nor the mortgages executed for the balance as required by the purchase agreement. This Court said: "In equity the situation was then the same as if the Corporation had conveyed title to the purchasers, as owners, and they had mortgaged the lots to the Corporation to secure the unpaid purchase money." Page 555. The Court sustained the tax subject to the paramount lien of the United States. We think the petitioner's Minnesota property is in a similar position. Ownership of the beneficial interest has passed to the petitioner with legal title retained by the United States for security purposes. This should not put this private property in an exempt class.

There is a suggestion that to hold United States property subject to state taxation pending the completion of payment will injuriously affect its salability and therefore interfere with the Government's handling of its affairs. Our recent cases have disposed of this economic argument in a way which is contrary to petitioner's contention. *Alabama* v. *King & Boozer*, 314 U. S. 1, and cases cited.

The only other contention of petitioner which we need mention is that the state has included the interest of the United States in the valuation of the land, and has therefore subjected that interest to taxation. But no deduction need be made for the interest of the Government since that interest is for security purposes only and is not beneficial in nature. The whole equitable ownership is in the petitioner and the value of that ownership may be ascertained on the basis of the full value of the land. *New Brunswick v. United States*, *supra*, at 555-56.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of these cases.

[20] But see ABR Corp. v. Newark, 133 N. J. L. 34.

Mr. Chief Justice STONE, with whom Mr. Justice FRANKFURTER joins, concurring.

I concur in the result, but I do not join in so much of the opinion of the Court as undertakes to discuss the territorial jurisdiction of the State of Minnesota over the land in question. The territorial jurisdiction of the state to lay the tax, said to be a novel question, was not raised in the state courts, by the petition for certiorari, or in argument or briefs in this Court. Under our decisions we are therefore not free to decide it. *McGoldrick* v. *Compagnie Generale*, 309 U. S. 430, 434-5; *Wilson* v. *Cook*, No. 328, 1945 Term, slip opinion p. 6, and cases cited; see also Rule 38, par. 2 of the Rules of this Court; *Flournoy* v. *Wiener*, 321 U. S. 253, 259. Since the opinion of the Court expresses no disapproval of these authorities, I take it that everything said on the question of Minnesota's territorial jurisdiction to tax is dictum. Our opinion should be confined to the single question which the petitioner presents for our decision, whether the retention by the United States of the legal title to the taxed land precludes its taxation to petitioner, which, under its contract with the Government, has acquired possession and right to possession. As I have no doubt on this question, I agree the judgments should be affirmed.

Mr. Justice FRANKFURTER concurring.

The Government sold a piece of surplus property located in St. Paul, Minnesota. It put the vendee in possession but retained the legal title, with the right of re-entry, as security for portions of the purchase price remaining due under the contract of sale. The decisive question before us is whether the interest thus retained by the United States bars Minnesota, under a general non-discriminatory law, from taxing the vendee's interest in the property. The Constitution itself furnishes no answer in terms. But the considerations governing the appropriate adjustment between national and state powers of taxation, where the incidence of taxation may affect the property or functions of one another, do not require that entire immunity from state taxation be afforded this piece of property because of the interest which the United States retained to secure the unpaid purchase price.

Since the Government's security is left untouched by Minnesota, what remains of the Government's relation to the property is too attenuated to withdraw it entirely from Minnesota's taxing power.

The matter would hardly be open to question but for a series of cases arising under land grant legislation. As the opinion of the Court persuasively shows, these decisions rest upon considerations of policy not relevant to the immediate situation.

I agree with the Chief Justice that our disposition of this case should be confined to the only question raised by the record, that of the State's power to tax, unembarrassed by any issue as to territorial jurisdiction. The Chief Justice gives conclusive ground for such abstention. Moreover, even as to property indisputably owned by the Government, there may be "uncertainty and confusion" whether jurisdiction belongs to the federal government or to a State. See *Bowen* v. *Johnston*, 306 U. S. 19, 27; and *Pacific Coast Dairy* v. *Dep't*, 318 U. S. 285, 299. Taxability and territorial jurisdiction are not correlative. We ought not to borrow trouble.